

REMARKS/ARGUMENTS

In the communication, it is alleged that Applicant's submission filed on 08-26-05 is not fully responsive to the prior Office Action because Applicant has not clearly indicated which claims correspond to the elected embodiment. In response, Applicant respectfully disagrees with the characterization of the August 26<sup>th</sup> Applicant's submission and submits that the response to the prior Action was as complete the Office Action itself. Once again, Applicant traverses the alleged embodiments listed in the prior Office Action (Embodiment 1: figure 1; Embodiment 2: figure 2; and Embodiment 3: figure 3). The restriction requirement is improper in its form, composition, and lack of substance. The restriction is traversed.

Election of Species Under Traverse

In response, as a formality merely to comply with §818.03(b), Applicants hereby preliminarily elect figure 1, designated as Embodiment 1, for an examination on the merits.

Arguments in Support of Traversal of Restriction

The examiner has not given any reason why the supposed "species" are considered to be patentably distinct. Without any supporting reasons, it is not Applicants' burden to show they are not distinct. Likewise it is not incumbent upon Applicants to admit that subgroups of claims are obvious variants of other groups of claims.

As stated in the Amendment/Election of Species with traverse previously submitted on May 2, 2005, it is Applicants' position that the claims are not drawn to separate species. This fact should be clear merely from the claims themselves that are all submitted as dependent on Claim 1. Each of the claims in fact are drawn to a "control element having a rotary knob ..."

The MPEP in §803 makes clear that a restriction between patentably distinct inventions is only proper if the inventions are independent or distinct as claimed and there is a serious burden on the examiner if a restriction is not required. A serious burden on the examiner is *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search. However, where "the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions." Yet, the examiner has done nothing more than to state in a conclusory manner that the alleged inventions are separate and distinct without any showing or explanation for this distinction.

There has been no attempt in the Office Actions to provide reasons why restriction is required. There is no showing of a separate classification, separate field of search, or any showing of additional burden on the examiner for searching and examining the claims together in one patent application.

Accordingly, it is respectfully submitted that restriction is improper. It is therefore respectfully requested that the restriction requirement be withdrawn and that the claims be examined on the merits.

Furthermore, it is asserted that the examiner improperly held the Applicant's submission non-responsive, and such action is petitionable to the Commissioner for relief.

Respectfully submitted,

By Larry Libetehuk  
Larry Libetehuk, Reg. No. 40,352  
Senior IP Counsel  
Philips Electronics N.A. Corporation  
914-333-9602